



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/172056

PRELIMINARY RECITALS

Pursuant to a petition filed February 13, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a telephonic hearing was held on March 10, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency met its burden to show that it correctly determined petitioner's FS effective March 1, 2016.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], HSPC Sr.
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner receives monthly Social Security income in the amount of \$1219. He also receives earned income from [REDACTED] and [REDACTED], although neither is a monthly income.
3. Petitioner pays \$795 in monthly rent.

4. In February 2016 petitioner's six month review form was processed. On February 11, 2016 the agency issued a notice to petitioner stating that his FS would be reduced to \$16 effective March 1, 2016.

DISCUSSION

In a hearing such as this for FS, it is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). The court in *Hanson* stated that the policy behind this principle is to assign the burden to the party seeking to change a present state of affairs. In other words, the agency must show why it did what it did. The agency's representative could not explain why the agency budgeted petitioner's earned income the way it did – as a monthly income. Petitioner testified at hearing that the [REDACTED] income is received at most as a quarterly income, and the [REDACTED] income fluctuates on the employer's need for petitioner's services. The agency could also not explain why petitioner's rent expense of \$795 was not budgeted for his FS calculation.

I therefore find that the agency has not met its burden to show that it correctly determined petitioner's FS effective March 2016. Petitioner provided his W-2s for [REDACTED] and [REDACTED] to the agency representative at hearing, which should be used for a redetermination of benefits.

CONCLUSIONS OF LAW

The agency has not met its burden to show that it correctly determined petitioner's FS effective March 1, 2016.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency to take the administrative steps necessary to redetermine petitioner's FS effective March 1, 2016 using the W-2s provided for [REDACTED] and [REDACTED] (so that they are not counted as monthly income, but averaged over a year) and using petitioner's correct rental obligation, issue any FS accordingly if eligible, and issue a notice of decision regarding that action. These actions shall be completed within 10 days of the date of this Decision. In all other respects, the petition herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 22nd day of March, 2016

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on March 22, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability